Testimony of Steven W. Koehn
State Forester of Maryland
On behalf of the National Association of State Foresters

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Committee on Transportation and Infrastructure

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Pest Management and Fire Suppression Flexibility Act

Good morning Mr. Chairman and members of the Committee. My name is Steve Koehn, and on behalf of the National Association of State Foresters, I am pleased to have the opportunity to testify before you today on the Pest Management and Fire Suppression Flexibility Act, introduced by Congressmen Otter and Cardoza. Aside from my duties as the Director of the Maryland Forest Service, I also serve as chairman of the National Association of State Foresters Water Resources Committee.

The National Association of State Foresters is a non-profit organization that represents the directors of the state forestry agencies from the states, U.S. territories, and the District of Columbia. State Foresters restore, manage, and protect private and state forests across the U.S., which together encompass two-thirds of our nation's forests.

As you know, H. R. 1749 would codify the Environmental Protection Agency's long-standing position that forestry activities, aerial use of fire retardant, and application of pesticide in accordance with the EPA-approved labeling do not require a National Pollutant Discharge Elimination System (NPDES) permit. It does not exempt these practices from regulation, but rather ensures that the intended regulatory authorities serve as the primary method of oversight. The National Association of State Foresters strongly endorses the Otter-Cardoza bill, as it would ensure our continued ability to manage and protect private and state forests across the nation.

State Foresters believe that clean water is the most valuable commodity that comes from a well-managed forest. Our state forestry agencies ensure forests continue to produce clean and abundant water to meet a variety of societal needs. The importance of water to our lifestyles and to our economic vitality is reflected in many sectors: from conservation of cold water fisheries to agriculture, from recreation and tourism to community development. One of a state forestry agency's primary missions is to protect this clean water by implementing forestry Best Management Practices (BMPs).

Forest Management
In 1976, EPA issued a regulation that explicitly excluded nonpoint source silviculture activities from the NPDES permitting requirements. Harvesting, site preparation, prescribed burning, pest control, road construction and maintenance, and thinning are all examples of silvicultural practices that were given a categorical exclusion from the NPDES process. This is not to say, however, that silvicultural activities are exempt from

any sort of regulatory control. EPA delegated the authority for enforcement of forestry nonpoint source water pollution control to the individual states. Over the past 30 years, the state forestry agencies have developed and implemented a strong, efficient, and workable process for ensuring forestry activities, primarily timber harvesting, do not significantly degrade water quality. Each state has developed its forestry BMP program with input from a variety of stakeholders, including landowners and loggers. These programs are updated regularly to ensure the best available science and techniques are being applied on the ground. States are constantly monitoring the implementation and effectiveness of their forestry BMP programs, with steadily improving success.

In my state of Maryland, controlling nonpoint source water pollution from forestry activities is a top priority of the Maryland DNR Forest Service. As one of the primary Chesapeake Bay states, we know well the significant impact to the ecosystem that can occur as a result of unchecked nonpoint source water pollution. While runoff from agriculture and urban development are the most significant contributors of nonpoint source water pollution to the Chesapeake Bay, forestry activities have the potential to contribute pollution as well, albeit at a lower rate. The Maryland Forest Service, along with the Maryland Department of the Environment, oversees the implementation of a highly effective forestry BMP program that ensures forestry activities are not contributing sediment and other pollutants to the Bay. My staff of more than 50 field foresters and forest rangers works closely with landowners, loggers, and the forest industry to ensure timber harvesting meets our state's BMP standards. The process works efficiently and effectively, allowing the logger and landowner to accomplish their goals, while simultaneously protecting water quality.

The situation I just described is also occurring in the other states and territories all across the nation. We are concerned that without this important legislation, future legal action may require landowners to obtain a NPDES permit prior to initiating any forestry activities. This scenario would have several detrimental effects. First, the permitting process would be redundant with complying with current forestry Best Management Practices. And second, it would be a prohibitively expensive step for many small family forest landowners who may only harvest timber once or twice during their lifetime. The income gained from these timber harvests is often pivotal to ensuring landowners keep their land in forest, as opposed to selling it for development.

Wildfire Suppression

One crisis that really resonates with the American people is a raging wildfire. While fire has its natural and beneficial role in the ecology of a forest, a century of fire suppression and rapidly increasing development in and around the forest has pushed wildfire far past that natural role. I'm sure many of you have seen pictures and television reports of helicopters and fixed-wing aircraft dropping water and fire retardant on wildfires in order to slow their spread. Fire managers often use this tool to protect houses and other property in those areas where forests and communities intermingle. These areas, commonly known as the "wildland-urban interface," are increasingly becoming more common across the landscape, both in eastern and western areas of the country. Controlling wildland fires in the wildland-urban interface is an increasingly difficult and

dangerous task, as risks to life and property greatly increase when fire and development are interspersed. The aerial application of water and fire retardant is often an essential tool to protect life and property in these communities. These techniques are also valuable when fighting fires in more remote areas, where access for initial attack hand crews is often a problem. We can quickly and safely knock back small fires before they can grow large and costly to control.

The National Interagency Fire Center, a coordinated group of seven federal and numerous state agencies, has developed guidelines for the application of fire retardant to wildland fires. These guidelines, published in the Interagency Standards for Fire and Fire Aviation Operations guidebook, were developed using data from studies that examined the effect of retardants on the environment. In order to protect water quality, the guidelines specify that aircraft must not apply fire retardant within 300 feet of a waterway, which includes lakes, rivers, streams, and ponds, whether or not they contain aquatic life. Retardant drops are usually supervised by ground personnel who also ensure these guidelines are followed. Furthermore, fire retardant is more effective when applied to ridge tops, as opposed to stream bottoms. These guidelines provide sufficient protection to waterways, while allowing fire managers to work quickly.

H. R. 1749 would ensure state and federal fire managers may continue to use aircraft to safely and effectively drop water and fire retardants to protect life, property, and the forest. Applying the NPDES permitting process to fire suppression would be redundant with current protections and wildly unrealistic, given the emergency nature of fighting wildfire. Retardant is often dispatched within hours of detecting a wildfire, clearly leaving no time for redundant permits.

Forest Health

The use of pesticides and biological control organisms to combat the spread of invasive exotic species is a high priority for the states. As the protectors of more than 500 million acres of state and private forestland across the country, State Foresters take an active role in detecting, controlling, and eradicating invasive forest pests and pathogens on these lands that comprise the majority of the nation's forests. The safe, scientific, and timely use of pesticides and biological control agents is an important and necessary tool for State Foresters and other forest managers to combat these harmful organisms. When controlling insect and disease outbreaks in forests, it is very often difficult or impossible to treat trees from the ground, due their height and inaccessibility. The aerial application of pesticides is often the best or only method of treatment in many cases.

A good example of successful aerial application in Eastern forests is our effort to control the gypsy moth caterpillar through the aerial application of the organism *Bacillus thuringiensis*, commonly known as "Bt.". This naturally occurring bacterium is a parasite of the caterpillar and is effective only during a short time period during the gypsy moth's life cycle. This forest pest has been a problem in Maryland since the 1980s. The larvae consume vast quantities of foliage, especially from oaks, and weaken the trees, often to the point where they become susceptible to other insects or diseases. The insect can affect major damage both to shade trees in urban areas and other communities and in

forests across the state. The Maryland Forest Service, along with the Maryland DNR's Forest Pest Management Section, works closely with private landowners and other government agencies to initiate an aerial spray program to control gypsy moth in our hardwood forests. Since the advent of the spray program, defoliation by gypsy moth has decreased dramatically. The success of the program is due in large part to our ability to move quickly to guarantee our window of opportunity is not missed. This bill would ensure that we are able to continue to effectively control this and other forest pests.

In many states, herbicides are used to control vegetation and to help young trees grow free from competition from weeds. A common practice is to apply liquid or granular herbicide from a helicopter or small fixed-wing aircraft to vegetation on the ground. The use of technology has enabled forest managers to precisely deliver the herbicide to the ground, while avoiding streams and other bodies of water. Technology such as Global Positioning Systems, high-pressure nozzles, and digital mapping make this precision possible. Operators follow strict guidelines for handling and applying the herbicides, including pesticide application licensing from the state. Each herbicide must be applied according to EPA approved labeling, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act. The current federal and state regulatory procedures are more than sufficient to protect water quality.

Many forest management activities, such as removing insect-infested trees, must be timed carefully so that they coincide with favorable seasonal conditions, or must be conducted on short notice. Requiring a NPDES permit will not leave landowners and forest managers nimble enough and may very well inhibit their ability to effectively time forest management activities or react to changing circumstances on the ground.

A good example of this scenario occurred in my state of Maryland just recently. In 2004, we discovered that a shipment of nursery stock to Maryland was infested with the emerald ash borer, and that the insect had escaped into the surrounding forest. As many of you know, the emerald ash borer, a small wood-boring insect native to Asia, was accidentally introduced into the Detroit metropolitan area, and has since spread into several surrounding states, including Ohio and Indiana. This invasive exotic insect destroys ash trees of several species, whether planted as shade trees in urban areas, or naturally occurring in the forest and elsewhere across the rural landscape.

Our ability to respond quickly to this unfolding crisis was of the utmost importance. The Maryland Forest Service, along with the Forest Pest Management Section of the Maryland Department of Agriculture, worked with a logger and several landowners to quickly remove every single ash tree within a one-half mile radius of the infested site. The cut ash were immediately piled and burned, successfully stopping the spread of this pest to Maryland and potentially other mid-Atlantic states. To date, this is the only known successful emerald ash borer eradication effort in the nation. The time involved in obtaining a NPDES permit, rather than simply following state forestry Best Management Practices, would certainly have resulted in an unsuccessful eradication process. I strongly support doing all we can do to ensure clean water, but the process

must be quick, efficient, and workable. Forestry Best Management Practices meet all three of these criteria.

Conclusion

In closing, I wish to stress a key point of this bill. It does not in any way remove protections for water quality under the Clean Water Act. Rather, it clarifies EPA's long-standing position that certain activities are to be regulated by other mechanisms. In this case, forestry Best Management Practices, the Federal Insecticide, Fungicide, and Rodenticide Act, and federal and state guidelines for fire retardant application are the appropriate mechanisms.

EPA's position has been clear all along. We strongly support EPA's development of a new rule to clarify the NPDES process, but we feel it does not do enough. The Otter-Cardoza bill would remove uncertainty, redundancy, and complexity from the process of protecting clean water. State Foresters believe the current suite of regulatory processes is efficient, effective and workable. More importantly, it has successfully protected our nation's water for nearly three decades.

Thank you for the opportunity to testify today. I would be happy to answer any questions you may have.